

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1929 of 1987

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

SMT. J.B.JADEJA, SITABA PRASUTIGRUH,

Versus

THE STATE OF GUJART, NOTICE TOBE SERVED THROUGH SECRETARY,

Appearance:

MR KIRIT I PATEL for Petitioner
MRS. HARSHA DEVANI, AGP for Respondent No. 1
RULE SERVED for Respondent No. 3

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI

Date of decision: 16/03/2001

C.A.V. JUDGEMENT

(Per : CHIEF JUSTICE MR DM DHARMADHIKARI)

#. By this Petition under Article 226 of the Constitution of India, the petitioner seeks quashing of

the order dated 10-4-1987 (Annexure C), whereby she has been reverted from the post of Staff Nurse to the post of Ward Sister in the health services of the State of Gujarat. The impugned reversion of the petitioner has been made on the ground that the petitioner failed to pass Mid-Wifery Examination in repeated attempts and it was an essential qualification for the post of Ward Sister under the provisions of Gujarat Nurses, Mid-Wives and Health Visitors Act, 1968, the Rules framed and Circulars issued thereunder.

#. The service history, in brief, of the petitioner is as under:-

The petitioner had passed examination for Nurses conducted by the Gujarat Nursing Council on 5-5-1968. She was working as Staff Nurse since 15-1-1970. As her name was maintained in the Register under the provisions of the above mentioned Act, she was a Registered Nurse on 26-8-1968. According to the petitioner, she was promoted to the post of Ward Sister by order dated 4-9-1985. It is not in dispute that on the date of her promotion, the petitioner had not passed the Mid-Wifery Examination.

#. The case of the respondent State is that pursuant to General Mid-Wifery Refresher Course, treating the petitioner to be a Mid-Wifery candidate, by order dated 26-12-1968, she was promoted by mistake before she had passed the Mid-Wifery Examination. It is not disputed that the petitioner was promoted by order issued on 4-9-1985 to the post of Ward Nurse before she could clear the Mid-Wifery Examination.

#. The petitioner was asked to produce Mid-Wifery Registration Certificate. By letter dated 1-12-1986, the petitioner informed the Authorities of the Department that she had not, by that time, received the Mid-Wifery Examination Certificate and upon getting the same she would submit the same. She informed that she had appeared in Mid-Wifery Examination in 1968. By letter dated 13-2-1987, the petitioner was again called upon by the Department Authorities to produce the Certificate, failing which her name would be deleted from the seniority list. The petitioner sent no reply to the said letter and now has taken a stand that respondent no. 3, the Superintendent of Mansinghji Hospital and Seetaba Maternity Home, Palitana, where the petitioner was working, had no authority to issue such a notice or letter and therefore, she did not consider it necessary to send any reply.

#. As the Superintendent had received no response to the letter sent to the petitioner, information was sought from the Registrar, Gujarat Nursing Council. The Registrar, Gujarat Nursing Council informed that the petitioner had appeared for Mid-Wifery Examination four times but could not clear the same. After receiving the above information, by order dated 10-4-1987, the petitioner's name was deleted from the seniority list of Ward Sister and by the impugned order dated 10-4-1987, the petitioner was reverted to the post of Staff Nurse.

#. During long pendency of this Petition, which was filed in the year 1987, several events have taken place concerning the service conditions of the Nurses. Pursuant to the various Government Resolutions, the details and background of which shall be stated hereinafter, the petitioner was promoted by order dated 1-7-2000 along with other female Nurses of her age to the post of Head Nurse in the revised scale of pay. It is also not in dispute that such a promotion was granted to the petitioner, despite the fact that she had not passed the Mid-Wifery Examination.

#. Learned counsel appearing for the petitioner has mainly raised two contentions. Firstly, it is contended that the impugned order of reversion dated 10-4-1987 is liable to be quashed on the short ground that the provisions of Article 311 of the Constitution of India of giving a show cause and opportunity of hearing as also principles of natural justice were not followed. The second contention advanced is that passing a Mid-Wifery Examination was not a pre-condition for promotion to the post of Ward Sister and this is now clear when despite her failure to pass the Mid-Wifery Examination along with other Female Nurses, the petitioner has now been given a delayed promotion on 1-7-2000. In support of the above contention, reliance has been placed on the decision of Supreme Court in the case of Balbirsingh Vs. State of Himachal Pradesh and others reported in 1999 II CLR 988 and Ram Ujarey vs. Union of India of the Supreme Court reported in 1999 (1) LLJ 804.

#. So far as the contention based on Article 311 of the Constitution of India is concerned, the protection of the above Article is not available to the petitioner as she was never substantively appointed to the post of Ward Sister. It was discovered by the Department that she was only a candidate sponsored for Mid-Wifery Examination and in anticipation of passing of that Examination she was promoted by mistake to the post of Ward Sister. Before reverting her on the above ground of lack of

qualification, she was sent a letter to show cause by the Superintendent of the Hospital. But she has herself to blame in not giving a reply to the same. Thereafter, the Department sought information from the Nursing Council and when it was discovered that she had failed to clear the Mid-Wifery Examination despite repeated attempts, she was reverted. On the above facts, it cannot be held that there was violation of Article 311 of the Constitution of India or principles of natural justice.

#. So far as the second ground is concerned, based on subsequent events of the promotion of the petitioner to the post of Head Nurse regardless of her failure in Mid-Wifery Examination, the State has given the full background leading to the promotion of the petitioner to the post of Head Nurse on 1-7-2000. This factual background has been stated in the written submissions made on behalf of the respondents, as the argument on the basis of subsequent events was raised during hearing of the case.

##. Before dealing with the second contention advanced on behalf of the petitioner, it is required to be mentioned that in accordance with the recruitment rules framed under Article 309 of the Constitution of India, namely, Sister/Ward Master Recruitment Rules, 1991, the necessary qualifications for promotion to the post of Ward Sister are: 'not less than five years service in the cadre of Staff Nurse'. The other requirement is that a candidate for earning promotion must be a Registered Nurse and a Registered Mid-Wife with the Gujarat Nursing Council under the Gujarat Nurses, Mid-Wives and Health Visitors Act, 1968. As has already been mentioned above, admittedly, the petitioner never got registered as Mid-Wife with the Gujarat Nursing Council, as she failed to clear that Examination in repeated attempts. The other contention that requires to be considered is that on the subsequent event of her promotion as Head Nurse on 1-7-2000, whether the petitioner can claim quashing of her earlier impugned order of reversion made on 10-4-1987 and claim seniority in the cadre of Ward Sister.

##. The background leading to the relaxation of qualification of passing Mid-Wifery Examination by Female Nurses has been given in the written submissions of the respondents. By Government Resolution dated 17-10-1998, under the Recruitment Rules for Staff Nurses, it was compulsory for women candidates to pass Mid-Wifery Examination, whereas no such provision was made for the Male candidates. As a result, Male Nurses got the benefit of promotion as Head Nurses and higher pay scales

whereas, Female candidates who had not passed the Mid-Wifery examination did not get the benefit. As a result, Female Nurses serving in the cadre of Staff Nurses since last more than 20-25 years could not earn any promotion. 18 such Female Nurses were identified which included the petitioner. With the coming into force of higher pay scale scheme, the 18 Female Nurses could not get promotion, because they had not passed the Mid-Wifery Examination. These 18 Female Nurses were between the age group of 40-56. In this age range, it was difficult for them to pass any examination. In such an extraordinary situation and with a view to remove the gender discrimination between Male Nurses and 18 Female Nurses, the Female Nurses were exempted from passing the Mid-Wifery examination. The Government Resolution dated 17-10-1998 (Annexure R-1 with the written submissions of the respondents) is shown as a decision to remove the gender discrimination against 18 Female Nurses as against their Male counterparts. A formal decision was therefore taken on 29-1-2000 (Annexures R-2 with the written submissions of the respondents) under which relaxation was granted to 18 Female Nurses from passing the Mid-Wifery Examination for grant of promotion as Head Nurses at par with Male Nurses. The names of 18 Female Nurses identified between the age group of 40-56 who were to be considered for promotion along with Male Nurses have been specifically mentioned in the Government Resolution dated 17-10-1998 and the petitioners name is included in it. As a result of the above Resolution, a formal decision was taken on 29-1-2000 (Annexure R-2 with the Written Submissions) and consequent there upon a formal order of promotion was issued on 1-7-2000 (Annexures R-3 to the written submission) promoting 18 Female Nurses including the petitioner to the post of Head Nurse in the higher scale of pay. On the above background of the subsequent events leading to the promotion of the petitioner as Head Nurse, the petitioner cannot legitimately raise a ground that her initial reversion by the impugned order dated 10-4-1987 from the post of Ward Sister to Staff Nurse was not legal and in accordance with Rules. As has been explained on behalf of the respondents in their written submissions the subsequent promotion of the petitioner to the post of Head nurse along with 17 other Female Nurses was with a view to remove the disparity in the service conditions of Female Nurses and Male Nurses. Inter-se seniority between the Female Nurses who have passed the Mid-Wifery Examination in accordance with the Recruitment Rules cannot be allowed to suffer by placing the petitioner above or with them on the basis of an erroneous order of promotion granted to her and ignoring the fact that she

lacked the minimum prescribed qualification of passing Mid-Wifery Examination. On the basis of her subsequent promotion as Head Nurse, she cannot be given position and seniority vis-a-vis other Female Nurses on the post of Ward Sister. The subsequent events and promotion of the petitioner to the post of Head Nurse, therefore, does not in any manner advance her case of quashing the impugned order of reversion and giving her seniority vis-a-vis other Female Nurses who were promoted because they had to their credit successful passing the Mid-Wifery Examination.

##. For the reasons aforesaid, this Court finds no ground to accept the contentions of the petitioner and grant her the relief prayed by her.

In the result, the Petition fails and is hereby dismissed, but in the circumstances without any order as to costs.

Rule is discharged. Ad-interim relief is vacated.

(D.M. DHARMADHIKARI, C.J.)

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